



B-67

STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Scott Seliga,
Pleasantville

CSC Docket No. 2014-2464

Request for Counsel Fees

ISSUED: MAR 09 2015 (JET)

Scott Seliga, a Police Captain with Pleasantville, represented by Steven R. Cohen, Esq., requests counsel fees in accordance with the attached Civil Service Commission (Commission) decision rendered on February 12, 2014.

By way of background, the appointing authority charged the appellant with incompetency, insubordination, conduct unbecoming an employee, and other sufficient cause, and he was removed from his position effective June 7, 2013. Specifically, the appointing authority asserted that the appellant interfered with an internal affairs investigation when he asked, ordered and/or required a subordinate to withdraw an ongoing internal affairs investigation. The appellant subsequently appealed to the Commission, and the matter was referred for a hearing to the Office of Administrative Law. Following a hearing, the Administrative Law Judge (ALJ) recommended that the charges against the appellant be dismissed. Upon its review, the Commission adopted the ALJ's initial decision, reinstated the appellant and awarded back pay, benefits and counsel fees in accordance with *N.J.A.C. 4A:2-2.12*.

The parties were unable to reach an agreement regarding the amount of counsel fees due. In support of his request, the appellant's attorney filed an application for counsel fees and provided a certification of services dated March 11, 2014, requesting \$37,180 for 185.9 hours of work at a rate of \$200 an hour, \$21,525 for 143.5 hours of work at a rate of \$150 an hour, plus \$1,143.46 for costs, for a total of \$59,848.46. The appellant provides an itemized statement for services performed by Mr. Cohen from August 22, 2012 to March 10, 2014, for Keith Waldman, Esq., from August 22, 2012 to March 10, 2014, and for Kathleen L. Kirvan, Esq., from

August 22, 2012 to March 10, 2014. These records indicate that Mr. Cohen dedicated a total of 181.8 hours, Mr. Waldman dedicated 4.10 hours, and Ms. Kirvan dedicated a total of 143.5 hours to the appellant's appeal. Mr. Cohen is a partner in a law firm and he was admitted to the New Jersey Bar in 1977, Mr. Waldman is a partner in a law firm and he was admitted to the New Jersey Bar in 1989, and Ms. Kirvan is an associate attorney in a law firm and she was admitted to the New Jersey Bar in 2010. The appellant's attorney also filed for additional counsel fees for pursuing the instant matter before the Commission. In this regard, the appellant provides an itemized statement for services performed by Mr. Waldman from March 11, 2014 to July 2, 2014 and for Ms. Kirvan from March 11, 2014 to July 2, 2014, requesting \$420 for 2.10 hours of work at a rate of \$200 an hour and \$1,170 for 7.8 hours of work at a rate of \$150 an hour and \$210.63 in costs, for a total of \$1,800.63. Accordingly, the appellant requests a total of \$61,649.09 in counsel fees.

In support of the request, the appellant's attorney provides a copy of the "Agreement to Provide Legal Services" (fee agreement) signed by the appellant which provides for payment of a \$125 hourly rate for Cohen, Waldman, Kirvan, Michael Damm, and Stacey Schor. Additionally, the appellant submits a certification signed by Norman Myers, Business Agent for PBA #77. In the certification, Myers explains that the fee agreement plan in this matter provides identical coverage to similar plans provided by the New Jersey State Policeman's Benevolent Association Legal Protection Plan (NJPBA LPP). Specifically, he states that the only difference between the plan in this matter and the NJPBA LPP is that the plan in this matter is self-insured and administered by PBA #77 and is an excess plan that provides for a \$125 an hour reimbursement for counsel fees when recovery of such fees from the appointing authority is not possible. Moreover, the appellant's attorney explains that the plan in this matter would have paid counsel fees and costs of up to \$20,000 and the appellant would have been responsible to pay any excess fees and costs. However, due to the dismissal of the charges and the Commission's award of counsel fees, the plan in this matter is not responsible to pay counsel fees and costs. Therefore, counsel requests reimbursement of fees directly from the appointing authority.

In response, the appointing authority, represented by Arthur Thibault, Jr., Esq., asserts that the appellant entered into a fee agreement for \$125 an hour. The appointing authority adds that the reasonable hourly rate is the rate the law firm agreed to accept for the representation. Further, the appointing authority contends that the certification of services does not reflect the \$125 hourly rate as indicated in the fee agreement. As such, it appears that the petitioner is attempting to change the \$125 hourly rate. The appointing authority explains that it is inappropriate for the appellant's attorney to request a higher amount than the \$125 hourly rate as

indicated in the fee agreement.¹ In this regard, *N.J.A.C.* 4A:2-2.12 establishes that the petitioner is not entitled to a greater rate than as set forth in the fee agreement. Thus, the Commission should only award an hourly rate of \$125 for fees. Moreover, the appointing authority argues that the petitioner only provides copies of invoices in support of his request for counsel fees.

Additionally, the appointing authority states that 70.5 hours of services as indicated by the appellant's attorney is duplicative and unnecessary. Specifically, the appointing authority argues that it was unnecessary for attorneys Cohen and Kirvan to conduct various conferences and this matter did not warrant a five hour legal discussion. The appointing authority adds that there was no need for two attorneys to bill 112.6 hours for appearing at the OAL hearings. Further, the appointing authority states that 14.2 hours in duplicative fees² and normal overhead should be excluded. In this regard, the appointing authority requests that only 56.3 hours in services should be awarded. In addition, the appointing authority maintains that petitioner's request for travel reimbursement is unreasonable and Civil Service rules only contemplate out-of-state travel. See *N.J.A.C.* 4A:2-2.12(g). Thus, travel expenses should be disregarded as overhead costs. Moreover, petitioner's request to be reimbursed for telephone calls, postage, photocopies, and faxes should be denied since they represent normal overhead costs. Therefore, the appointing authority contends that the Commission should only award \$32,362.50 as reasonable counsel fees.

CONCLUSION

N.J.A.C. 4A:2-2.12(c) provides as follows: an associate in a law firm is to be awarded an hourly rate between \$100 and \$150; a partner in a law firm with fewer than 15 years of experience in the practice of law is to be awarded an hourly rate between \$150 and \$175; and a partner in a law firm with 15 or more years of experience practicing law, or notwithstanding the number of years of experience, with practice concentrated in employment or labor law, is to be awarded an hourly rate between \$175 and \$200. *N.J.A.C.* 4A:2-2.12(e) provides a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors shall be considered: the time and labor required, the novelty and difficulty of the questions involved, and the skill

¹ The appointing authority notes the comments during the public hearing on September 5, 2001 on the proposed rule, where the MSB responded that the language in subsection d would provide that "the fee awarded would be no higher than that provided for in the agreement [because] an agreed-upon fee indicates that counsel is satisfied with the fee." 33 *NJR* 2727.

² The appointing authority argues that the statement of fees indicates that duplicative work was performed by Cohen and Kirvan on the following entries: August 23, 2012; August 27, 2012; October 11, 2013; October 14, 2013; October 15, 2013; October 24, 2013; October 28, 2013; December 4, 2013; December 11, 2013; December 18, 2013; December 24, 2013; December 27, 2013; and February 12, 2014. The appointing authority also indicates that Kirvan should not be compensated for reviewing multiple correspondence on January 27, 2014.

requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; the nature and length of the professional relationship with the employee; and the experience, reputation and ability of the attorney performing the services. *N.J.A.C. 4A:2-2.12(g)* provides that reasonable out-of-pocket costs, such as costs associated with expert witnesses, subpoena fees and out-of-state travel, shall be awarded. However, costs associated with normal office overhead shall not be awarded. *N.J.A.C. 4A:2-2.12(d)* provides that, if an attorney has signed a specific fee agreement with the employee or the employee's negotiations representative, the fee ranges set forth above may be adjusted. *N.J.A.C. 4A:2-2.12(e)* provides that the fee amount or fee ranges may be adjusted based on the circumstances of the particular matter, and in consideration of the time and labor required, the customary fee in the locality for similar services, the nature of length of the relationship between the attorney and client and the experience, reputation and ability of the attorney.

In the instant matter, the appellant's attorney signed a fee agreement which acknowledged that the appellant participates in a PBA plan, but agreed to a billable hourly rate as \$125.00 if the dollar limits provided by the plan were exhausted. The appellant's attorney argues that the PBA plan will not reimburse counsel fees and costs in this matter since the charges were dismissed. Thus, since the PBA plan did not reimburse counsel fees, the appellant essentially maintains that this fee agreement does not apply and the rates specified in *N.J.A.C. 4A:2-2.12* should be utilized. The appointing authority objects to the request for counsel fees, arguing that the appellant's attorney signed a fee agreement establishing a \$125 hourly fee. The Commission agrees. The fee agreement clearly dictates the hourly fee of \$125.00 for attorney's services. It is of no moment that the PBA plan, as an excess insurance provider, was not utilized because the appellant prevailed in his appeal and he could pursue counsel fees from the appointing authority. The fee agreement clearly indicates his counsel was satisfied with the \$125 hourly rate. In this regard, it must be emphasized that the purpose of *N.J.A.C. 4A:2-2.12(d)* is to preclude attorneys from being unjustly enriched by charging an appointing authority a higher rate than they agreed to receive in a fee agreement. *See In the Matter of Francesco Grupico and Roy McLeod* (CSC, decided September 16, 2009) (Commission determined that attorney who agreed to participate in the New Jersey State Policemen's Benevolent Association's Legal Protection Plan (Plan) constituted a specific fee agreement and he was only entitled to the hourly rate agreed to in the Plan).

Further, the appellant has not established entitlements to reimbursement at a higher rate as the legal issues were not novel nor were extraordinary time and labor expended in this matter. The underlying disciplinary matter was clearly not novel in any way and was no more complex than any of the thousands of disciplinary appeals involving removals decided over the years by the Commission. In this regard, an appeal of a removal from employment inherently lacks the legal

complexity necessary to justify the hourly rate requested and no unique legal experience was required by counsel.

With respect to his request for counsel fees for pursuing this matter before the Commission, generally, an appellant is entitled to counsel fees regarding his enforcement request for his counsel fee award since New Jersey courts have recognized that attorneys should be reimbursed for the work performed in support of a fee application. See *H.I.P. (Heightened Independence and Progress, Inc.) v. K. Hovnanian at Mahwah VI, Inc.*, 291 N.J. Super. 144, 163 (Law Div. 1996) [quoting *Robb v. Ridgewood Board of Education*, 269 N.J. Super. 394, 411 (Ch. Div. 1993)]. Accordingly, the appellant is entitled to \$1,590 in additional fees and costs.

In the statement of counsel fees, Cohen requests to be compensated for his appearance at the May 15, 2013 departmental hearing in Pleasantville including travel for a total of 6 hours. Further, Cohen requests to be compensated for his separate appearances at the OAL hearings on October 31, 2013, November 12, 2013, November 14, 2013, November 15, 2013, November 21, 2013, and November 25, 2013, which includes travel for a total of 56.5 hours. Kirvan also requests to be compensated for her appearances at OAL on October 31, 2013, November 12, 2013, November 14, 2013, November 15, 2013, November 21, 2013, and November 25, 2013, which includes travel for a total of 56.3 hours. The Commission disagrees with the appointing authority's argument that Kirvan's appearance at the hearing was not necessary. As indicated in its petition, Kirvan's responsibilities included managing the volume of exhibits and record statements in case those statements needed to be played to refresh a witness's memory or for impeachment purposes. Moreover, the appointing authority conceded that it had another attorney present during the last two days of the hearing. Accordingly, Kirvan will be reimbursed for her appearances at OAL. However, travel time to and from the hearing is not reimbursable. Therefore, the Commission finds that two hours travel time to and from the hearing shall be deducted for each separate date of appearance for Cohen and Kirvan. Regarding the appointing authority's argument that duplicative and unnecessary work was performed on several dates by Cohen and Kirvan, the Commission is satisfied that such work, including conferences, drafting interrogatories, and preparing responses to discovery, was necessary in order to provide the petitioner with an adequate legal defense.

Therefore, counsel fees are awarded as follows:

Mr. Cohen: 171.5 hours x 125 = \$21,437.50

Mr. Waldman: 4.10 hours x 125 = \$512.50

Ms. Kirvan: 131.70 x 125 = \$16,462.50

Total: \$38,412.50

In addition, the petitioner requests to be reimbursed for \$1,064.71 in costs. Such costs are for UPS charges, photocopies, mailings, telephone calls, and facsimiles. However, as indicated above, the costs that represent normal office overhead will not be awarded. See *N.J.A.C. 4A:2-2.12(g)*. These costs include photocopying expenses and expenses associated with the transmittal of documents through use of Federal Express or a messenger service. See e.g., *In the Matter of Monica Malone*, 381 *N.J. Super.* 344 (App. Div. 2005). Further, fees or costs associated with telephone or facsimile equipment are considered normal office overhead. Thus, the petitioner will not be reimbursed for items associated with UPS charges, photocopies, mailings, and telephone office overhead. However, the appointing authority's argument that only out-of-state travel expenses are contemplated by Civil Service rules is misplaced. In this regard, *N.J.A.C. 4A:2-2.12(g)* provides that reasonable out-of-pocket costs shall be awarded, including, *but not limited to*, costs associated with expert and subpoena fees and out-of-State travel expenses. In prior matters, the Commission has awarded expenses related to travel, tolls, parking, courier services, obtaining records, and transcripts as reimbursable expenses pursuant to *N.J.A.C. 4A:2-2.12(g)*. See *In the Matter of Tracey Andino* (MSB, decided August 21, 2003); *In the Matter of Gail Murray* (MSB, decided June 25, 2003). In this case, travel expenses (mileage and tolls) for appearances at hearings on May 15, 2013, October 31, 2013, November 12, 2013, November 14, 2013, November 15, 2013, November 21, 2013, and on November 25, 2013 would usually be considered reasonable. Accordingly, the appellant should be reimbursed \$545.44 for mileage, tolls, witness fees, and filing fees.

Therefore, the Commission finds that the appellant is entitled to reimbursement for \$38,412.50 in counsel fees and \$545.44 in costs.

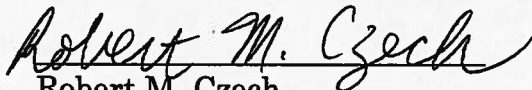
As the only issue in this matter was the amount of counsel fees, it is unknown if issues regarding back pay have been resolved. Accordingly, since the outstanding issues concerning the amount of counsel fees ordered in the Commission's prior decision have been resolved, if the issue of back pay has been resolved by the parties, the decision will be final. See *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003) (A decision of the Commission is a final administrative decision when all issues of back pay and/or counsel fees are resolved).

ORDER

Therefore, it is ordered that this appeal be granted in part and that the appointing authority pay Steven R. Cohen, his partner, Keith L. Waldman, and his associate, Kathleen L. Kirvan, counsel fees with an hourly rate of \$125.00 for a total of \$38,412.50 and costs in the amount of \$545.44 within 30 days of the issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
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Attachment

c: Scott Seliga
Steven R. Cohen, Esq.
Arthur Thibault, Jr., Esq.
Jesse Tweedle, Sr.
Kenneth Connolly
Joseph Gambino



A-10

STATE OF NEW JERSEY

In the Matter of Scott Seliga
City of Pleasantville
Police Department

CSC DKT. NO. 2013-3551
OAL DKT. NO. CSR 9410-13

**DECISION OF THE
CIVIL SERVICE COMMISSION**

ISSUED: February 12, 2014 PM

The appeal of Scott Seliga, Police Captain with the City of Pleasantville, Police Department, of his removal effective June 7, 2013, on charges, was heard by Administrative Law Judge W. Todd Miller, who rendered his initial decision on December 11, 2013, reversing the removal. Exceptions and cross exceptions were filed by the parties.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on February 12, 2014, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay and counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

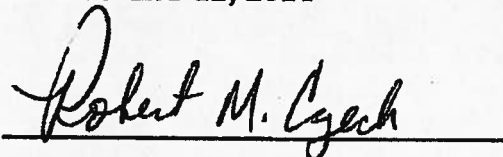
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Scott Seliga. The Commission further orders that appellant be granted back pay, benefits, and seniority for the period of separation to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
FEBRUARY 12, 2014

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
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Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312**

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 9410-13

AGENCY DKT. NO. n/a

2013-3551

**IN THE MATTER OF SCOTT
SELIGA, CITY OF PLEASANTVILLE.**

Steven R. Cohen, Esq., for Scott Seliga, appellant (Sellkoff & Cohen, attorneys)

**Joan Kane Josephson, Esq., for City of Pleasantville, respondent (Parker,
McCay, attorneys)**

Record Closed: December 4, 2013

Decided: December 11, 2013

BEFORE W. TODD MILLER, ALJ:

STATEMENT OF THE CASE

Appellant, Captain Scott Seliga appeals his removal from his employment with the City of Pleasantville Police Department (Pleasantville or Department). The charges sustained in the Final Notice of Disciplinary Action dated June 5, 2013, were incompetency (N.J.A.C. 4A:2-2.3(a)1), insubordination (N.J.A.C. 4A:2-2.3(a)2), conduct unbecoming a public employee (N.J.A.C. 4A:2-2.3(a)6), other sufficient cause (N.J.A.C. 4A:2-2.3(a)12), citing, Pleasantville Rules and Regulations 5:1.2 (Misconduct), 1:4.14 (Moral), 1:5.2 (Ethics), 3:1.5 (Unlawful Orders), 3:1.32 (Respect), 3:1.34 (Use of Position), 3:1.38 (Retaliation), 3:8.3 (Testifying in Department Investigations). I found the Internal Affairs Complaint filed by Sergeant Matt Hartman which formed the basis of

the disciplinary action, to be frivolous and the investigation to be tainted. For the reasons outlined below, the charges are **DISMISSED**.

PROCEDURAL HISTORY

This matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. It was filed at the OAL on June 6, 2013. Hearings were held on October 31, 2013, November 12, 14, 15, 21, and 25, 2013. The record was held open for final submissions on December 4, 2013, wherein the record closed.

FACTUAL BACKGROUND

This matter originated with the filing of an internal affairs (I/A) complaint on April 30, 2012, by Sergeant Matt Hartman against Captain Scott Seliga. Sergeant Hartman alleged that Captain Seliga was having an "improper personal relationship" with his estranged wife, Alma Toro-Hartman, from whom he had been separated since 2009. (R-22:295).

On May 1, 2012, Alma Hartman emailed a letter to the Pleasantville Police Chief stating that she and Sergeant Hartman are separated; are no longer a married couple; have agreed to see other people; and that Sergeant Hartman's I/A complaint created false impression regarding their relationship. (R-22:370). Nevertheless, an investigation ensued resulting in numerous charges being sustained against Captain Seliga and his removal from service.

Pleasantville hired Captain Seliga on January 25, 1991. Seliga held the rank of Patrolmen, Detective, Detective Sergeant, Patrol Sergeant, Lieutenant, Patrol Captain (2009), and Administrative Captain (2012). He has no major or minor documented disciplinary actions during his twenty-two years with the department. He earned or received at least forty certificates for continuing education and training in a variety of areas over his career (R-1). Seliga has eight letters of commendation (R-5). Seliga was hired in the same class as Captain Rocky Melendez, the I/A investigator for this matter.

Sergeant Matt Hartman is the estranged husband of Alma Toro-Hartman. They were married for about nine years. They have two children ages five and six. Sergeant Hartman has admitted to having numerous extramarital affairs (before and) during his marriage with Alma Hartman. He has seen at least four different counselors or psychologists for marriage counseling and/or anger related issues before and during the marriage. Sergeant Hartman has been employed by Pleasantville for about thirteen years. He served in the United States Air Force (Air National Guard) and was on active duty in the Middle East.

Alma Toro-Hartman (a/k/a Alma Hartman) is the estranged wife of Sergeant Matt Hartman. She is employed as a first grade school teacher. Alma Hartman and Sergeant Hartman separated in 2009, reside in separate homes, and have remained separated. Both agreed to date other people outside their marriage once it was determined that their marriage was not salvageable.

The facts herein primarily deal with the events that occurred from period April 26, 2012, through May 19, 2012. Prior to April 26, 2012, rumors were swirling around the Pleasantville Police Department that Captain Seliga was dating Sergeant Hartman's wife, Alma Hartman. On April 26, 2012, Sergeant Hartman asked Captain Melendez to come to his house in Absecon to discuss a personal matter. Melendez agreed and when he arrived at Hartman's home - Hartman stated, "My Captain is fucking my wife!" (R-22:293). Sergeant Hartman stated he was "extremely disappointed, hurt and angry." (R-22:293). On the spot, Sergeant Hartman turned in all of his service and privately owned weapons to Captain Melendez. Sergeant Hartman stated that he did not want to get blamed for any false allegations. Hartman admitted to Captain Melendez that he observed his wife's vehicle backing out of Captain Seliga's garage in the early morning hours on April 25, 2012, at 0020hrs. (R-23:293-295).

Sergeant Hartman was so distraught that he requested time off from work from April 26, 2012, to May 14, 2012. This request was granted so that Sergeant Hartman did not commit any hostile acts towards Captain Seliga. (R-22:297). Hartman also requested that Captain Seliga be advised by Melendez not to have any telephonic,

personal, or electronic contact with his wife. Melendez indulged Sergeant Hartman's request and informed Captain Seliga of the allegations made by Sergeant Hartman. (R-22:296).

On or about April 26, 2012, Sergeant Hartman informed Alma Hartman that he filed an I/A complaint against Captain Seliga. (R-22:305). According to Alma Hartman, Sergeant Hartman told her he would drop the I/A complaint against Seliga, if she came back and lived with him. Sergeant Hartman also told Alma Hartman that he had to file the I/A complaint so he did not look like a "pussy" in front of the other officers. Sergeant Hartman admitted he had been following Alma Hartman and had seen her pull out of Captain Seliga's garage in her vehicle on April 24-25, 2012.

On April 30, 2012, Sergeant Hartman filed a Special Report, which became the official I/A complaint against Captain Seliga. The special report alleged that Captain Seliga was having an "improper personal relationship with my spouse" Alma Hartman. (R-22:295).

By letter dated May 1, 2012, Alma Hartman completely and unequivocally disputed the facts and allegations made by Sergeant Hartman. (R-22:370). On May 2, 2012, her letter was received by the police department, including Captain Melendez. (R-22:298). Melendez considered the letter suspect, even though he had not been assigned to the I/A case until later in the day. Id.

On May 2, 2012, Chief Duane Comeaux officially assigned Captain Melendez to the Hartman I/A complaint against Seliga. According to Chief Luis Ruiz, Comeaux's successor, this was the first departmental I/A complaint filed by an officer against another officer, notwithstanding there have been known extramarital affairs in the department in the past.

On May 2, 2012, Captain Seliga was served with an Internal Affairs Complaint Notification. The notice alleges "Violation of Rules and Regulations Code of Ethics." (R-22:367). No civil service or department rules were cited.

On May 4, 2012, the Complaint Notification form stated that Captain Rocky Melendez was assigned to the case and the alleged charge was a violation of the code of ethics. (R-22:368).

On May 7, 2012, Captain Menendez interviewed Sergeant Matt Hartman. Hartman was informed that the interview would be recorded. Captain Melendez conducted a pre-interview that was not recorded. Hartman admitted he had prior affairs that damaged his marriage and that he was separated for about one year. In 2011, the marriage began to improve and reconciliation was occurring, including regular contact and intimacy. But the two still lived in separate homes because Alma Hartman's mother and niece had moved in to Alma's home.

Unexpectedly things changed in February 2012, according Sergeant Hartman. Alma Hartman had less contact with him. Sergeant Hartman became suspicious. To assuage or confirm his suspicions, Sergeant Hartman waited outside Alma's home in February 2012. Alma came home at 2:00 a.m. and he confronted her about her whereabouts. On another date in February 2012, Sergeant Hartman admitted that he followed Alma to CVS pharmacy.

Sergeant Hartman noticed that Alma began spending more time away from her house during the ensuing weeks. Sergeant Hartman also noticed that Alma was receiving text messages from Captain Seliga. Sergeant Hartman warned Alma about Captain Seliga, that he had relationships with other officer's wives or girlfriends.

Sergeant Hartman related that Alma's niece told him (Hartman) that Captain Seliga was coming to Alma's home and spending time with her in February 2012. The niece claimed that Alma and Seliga spent Valentine's Day together. (R-22:304). But, Sergeant Hartman also claimed he spent Valentine's Day with Alma. (R-22:301). All of these suspicions made Sergeant Hartman angry. (R-22:304).

On April 24, 2012, Sergeant Hartman drove to Captain Seliga's house at midnight and parked. He saw Alma back out of Captain Seliga's garage. On April 26, 2012, Sergeant Hartman confronted Alma and told her about his suspicions and what

he had observed. And he told Alma that he filed an I/A complaint against Captain Seliga (R-22:305). Sergeant Hartman's OAL testimony mirrored his statements made during the I/A interview.

On May 16, 2012, Captain Melendez interviewed Alyssa Toro, the nineteen-year-old niece of Alma Hartman. Toro was estranged from her family and she resided with Sergeant and Alma Hartman. However, at the time of Captain Melendez's I/A interview, Alyssa was no longer residing at Alma Hartman's home. Alma and Alyssa had differences and Alma Hartman asked her to leave her home.

Captain Melendez conducted the interview of Alyssa Toro at the Absegami High School. Vice Principal Michael Wilbraham¹ was permitted to sit in during the interview along with Pleasantville Police Detective Sample. Wilbraham was exposed to the intricacies of the I/A investigation and to the private matters involving Alma Hartman, Sergeant Hartman and Captain Seliga.

Alyssa Toro reported that Sergeant Hartman and Alma Hartman were in the process of fixing their marriage in 2011 through February 2012. But the marriage fell apart in 2012, when Captain Seliga started dating her aunt. Toro stated that her aunt and Sergeant Hartman would have resided together but Alma and her (Alma's) mother were residing together. Alma's mother had a dog that did not get along with Sergeant Hartman's dog, so he remained at a separate home with his dog. Alyssa Toro did not testify at the OAL hearing.

By all accounts that events from May 18-19, 2012, dramatically changed the course of the I/A investigation. Sergeant Hartman was the patrol sergeant in charge of the 4:00 p.m. to 12:00 a.m. shift on May 18, 2012. At 11:30 p.m., Sergeant Hartman told Officer Terry Tully (now retired) that he was leaving early. Sergeant Hartman also called Acting Sergeant Thomas Zyckowski (a/k/a T.J.) and asked if he could cover the balance of his shift. Hartman eventually left work fifteen minutes early, with his assault rifle over his shoulder. It was unusual for Sergeant Hartman to take his assault weapon

¹ Melendez claimed that the Vice Principle was acting as loco parentis "in place of the parent." Therefore he could sit in during the I/A interview.

home, even though he is a member of the county SWAT team, according to Tully. Hartman and other SWAT team members usually leave their weapons secured at the department.

Tully immediately called Captain Seliga. Tully explained to Captain Seliga that Hartman looked strange, distracted and not himself. He spent most of the shift on his cell phone. He had a crazed look. Tully heard the rumors circulating about Captain Seliga dating Alma Hartman, and it was obvious that Sergeant Hartman was not himself because of this revelation. Sergeant Hartman and Tully were friends for many years, even before Hartman was a police officer, and she decided to call Captain Seliga out of fear, due to Hartman's demeanor and behavior. In her words, "it's bad enough to go to an officer's funeral that you don't know - but it is even worse to go to one when you know the officer." Therefore, she warned Captain Seliga that Sergeant Hartman might be heading his way and to be careful. Tully stated that Captain Seliga sounded genuinely surprised and alarmed by her call. Once Acting Sergeant Zyckowski arrived at work, Officer Tully told Acting Sergeant Zyckowski that he had to have a talk with Hartman because he was losing his mind.

Captain Seliga immediately got dressed, found a flashlight, and went outside to see if Sergeant Hartman was in or around his home. In fact, Hartman was at his home, hiding in the neighbor's bushes. But he was never located by Seliga. Seliga walked and drove around the neighborhood looking for Hartman. He found Hartman's truck parked about a block away from his home. When Seliga returned home from driving around, his neighbor across the street came out and said she heard someone in her rear yard bushes. By this time Hartman's truck was gone.

Seliga had trouble sleeping the rest of the night. He did not know what Sergeant Hartman was going to do next. But he was very concerned for his personal safety and Alma's safety, due to Hartman's strange behavior and his history of following Alma Hartman.

In the early a.m. hours of May 19, 2012, Acting Sergeant Thomas Zyckowski called Sergeant Hartman to see how things were going, knowing that Hartman left work

